



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

FEB 1 0 2005

Mr. Edward Konz, Jr.
Konz-Diaz Champion Racing, Inc.
192 Raceway Dr.
Mooresville, MI 28117

RE: MUR 5420
Konz-Diaz Champion Racing

Dear Mr. Konz:

On January 11, 2005, the Federal Election Commission found reason to believe that Konz-Diaz Champion Racing violated U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed for your information.

The Act prohibits a corporation from making expenditures in connection with any federal election. *See* 2 U.S.C. § 441b(a). The Commission admonishes you that Konz-Diaz Champion Racing's actions appear to violate the Act. You should take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Thomas".

Scott E. Thomas
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Conz-Diaz Champion Racing

MUR 5420

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Mark Ortiz ("complainant"). *See* 2 U.S.C. § 437g(a)(1).

II. FACTS AND ANALYSIS

In this matter, complainant alleges that Conz-Diaz Champion Racing ("CDC"), a corporation, made a prohibited in-kind contribution when it attempted to field a racecar bearing the logo "Bush-Cheney '04" in NASCAR's 2004 Busch Grand National series. There was no information indicating any involvement by the Bush-Cheney committee.

The Act generally prohibits corporations from making contributions or expenditures in connection with elections to any political office. 2 U.S.C. § 441b(a). Further, pursuant to 11 C.F.R. § 114.2(a) of the Commission's regulations, corporations are prohibited from making expenditures for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidates. The Commission's regulations define "expressly advocating" as any communication that "[u]ses phrases . . . which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R. § 100.22(a).

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By placing the "Bush-Cheney '04" logo on the car, CDC made a prohibited corporate independent expenditure. Therefore, there is reason to believe that Conz-Diaz Champion Racing violated 2 U.S.C. § 441b(a). However, the impact of the expenditure was limited. The racecar described by the complaint attempted to qualify for the first race in the 2004 NASCAR Busch series, but failed to do so and never ran in that race. In fact, the car apparently never ran in any races. Moreover, CDC reportedly suspended operations after the first Busch series race, citing a lack of sponsorship money. Accordingly, in consideration of its priorities and limited resources, the Commission determined to take no further action and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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